

CHRISTINE L. JOHNSON
Claimant

SALINA REGIONAL HEALTH CENTER
Respondent

KANSAS HEALTH SERVICE CORPORATION
Insurance Carrier

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ORDER

ISSUES

On appeal, claimant contends she proved she injured her cervical spine on February 26, 2001, while working for the respondent. Furthermore, claimant contends she gave respondent notice of the accident within 10 days or, in the alternative, she established just cause for not providing respondent with notice within 10 days, which would extend the notice period to 75 days.

In contrast, respondent contends the ALJ's preliminary hearing Order that denied claimant's request for preliminary benefits should be affirmed. Respondent argues claimant failed to prove she suffered an accidental injury at work on February 26, 2001, and further failed to prove she satisfied the requirements of the timely notice statute.

¹ See K.S.A. 44-520.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the preliminary hearing record and considering the parties' briefs, the Appeals Board (Board) makes the following findings and conclusions:

The Board concludes that claimant proved through her testimony, the testimony of her co-worker, Susan Clark, and the opinions of her treating physician, A. B. Manguoglu, M.D., that on February 26, 2001, while working for the respondent she suffered a traumatic accident that caused a huge cervical disc herniation at C5-6. Dr. Manguoglu, on April 6, 2001, performed an anterior cervical microdiscectomy fusion at C5-6. In a letter to claimant's attorney dated June 5, 2001, Dr. Manguoglu opined, "within reasonable medical probability, that the above-described work accident caused the need for her surgery."

An injured worker is required to give the employer, within 10 days after the date of a work-related accident, notice of the accident or establish just cause for not giving the employer the 10 day notice.² The ALJ, in his preliminary hearing Order, found claimant did not give respondent notice of accident in 10 days and further found claimant failed to establish just cause for failure to give the 10 day notice. The ALJ concluded, "Claimant's testimony as to when she gave notice of injury is vague, indefinite, and is directly controverted by Ms. Smith."

Claimant testified she told her supervisor, Luanne Smith, two weeks or two days after her work-related accident that she hurt her back at work when she got up from under the bed and hit the anesthesia machine. At that time, Ms. Smith asked claimant if she had filled out an incident report and claimant told Ms. Smith that she had not. But Ms. Smith also testified, at the preliminary hearing, and unequivocally denied that claimant told her anything about hurting her neck or back in an accident at work. Ms. Smith testified that if claimant would have told her that she injured her back or neck at work she would have had the claimant immediately complete an incident report. Also, Ms. Smith testified that it was respondent's written policy for employees to report work-related accidents within 24 hours of the accident.

The first documented evidence that claimant gave notice to respondent of a work-related accident is an Employee Incident Report claimant completed on April 5, 2001. That report was completed by claimant after she told respondent's human relations representative that she had injured her neck at work. Claimant indicated on that report that her date of accident was January 26, 2001, but now alleges that this was an error and she claims that her date of accident was February 26, 2001. There is nothing in the preliminary hearing record except claimant's testimony to verify an accident date of February 26, 2001.

² See K.S.A. 44-520.

Claimant argues, although she does not recall the specific date, she did tell her supervisor of the work-related accident sometime within two days or two weeks of the accident. Accordingly, claimant argues that notifying her supervisor within a two week period of the February 26, 2001, accident date, notice would have been within the 10 days because intervening weekends and holidays are not counted in computing the 10 days.³ In the alternative, claimant argues she was unaware that she sustained a serious injury until her symptoms worsened to the point that on April 2, 2001, she could hardly move. At that time, claimant contacted Dr. Manguoglu who had her undergo an MRI examination and found the huge herniated cervical disc. Claimant then contacted respondent and notified respondent of the accident and resulting injury within 75 days of either the January 26, 2001, or February 26, 2001, accident date.

The Board concludes that the ALJ's finding that claimant failed to give respondent notice of accident within 10 days and also failed to establish just cause for not giving the 10 day notice should be affirmed. At the time of claimant's work-related accident, she had been employed by respondent as a registered nurse for some 16 years. Claimant's supervisor and her co-worker both established through their testimony that respondent had a policy requiring employees to promptly report work-related accidents. Claimant testified she casually reported the accident to her supervisor either two days or two weeks after the accident. But her supervisor unequivocally denies notice of accident and specifically testified, if claimant would have reported the accident to her, she would have had claimant immediately complete an accident report as required by respondent. Claimant then argues that she had just cause for not reporting the accident because she thought her symptoms would get better. But the Board finds this argument suspect because the accident was a traumatic event, claimant continued to have increasing symptoms following the accident, those symptoms became so severe that claimant requested treatment from a physician at work and she received cortisone injections before she finally reported her injury to respondent's human resources department.

As provided by the Act, preliminary hearing findings are not binding but subject to modification upon a full hearing on the claim.⁴

WHEREFORE, it is the finding, decision, and order of the Board that ALJ Bruce E. Moore's July 23, 2001, preliminary hearing Order, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of October 2001.

³ See Bain v. Cormak Enterprises, Inc., 267 Kan. 754, Syl. ¶2, 986 P.2d 373 (1999).

⁴ See K.S.A. 44-534a(a)(2).

BOARD MEMBER

c: Norman R. Kelly, Attorney for Claimant
Dustin J. Denning, Attorney for Respondent
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Workers Compensation Director